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KETUA PENTADBIR PARLIMEN MALAYSIA & ORS v. DATUK HJ IDRIS HJ BUANG & ANOR

FEDERAL COURT, PUTRAJAYA
HASNAH MOHAMMED HASHIM CJ (MALAYA)
ZABARIAH MOHD YUSOF FCJ
B AB KARIM AB JALIL FCJ
[CIVIL APPEAL NO: 01(f)-21-07-2024 (W)]
21 JULY 2025

C **Abstract:** *The adjustment of pensions based on the salary increase of current parliamentarians is a contingent right and not an accrued or acquired right when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was enacted on 16 February 2015. Such rights are contingent on the occurrence of a specified event,* D *ie, salary revision or merely an inchoate right that has not fully developed, matured or vested; (ii) The Legislature intended that by s. 3(2) of the Interpretation (Amendment) Act 1997, the amended s. 20 of the Interpretation Acts 1948 and 1967 ('Interpretation Acts') is to take effect retrospectively from 18 May 1967, ie, to coincide with the* E *commencement date of the Interpretation Acts. Thus, s. 20 is meant to validate past actions taken under all subsidiary legislations which were made retrospectively in the absence of express enabling powers in the parent Act. However, it must be emphasised that the important qualification is that the 'general savings' as appearing in the* F *Interpretation Acts 'may be displaced' by 'specific savings' in the amending or repealing Act itself; (iii) Articles 132 and 147 of the Federal Constitution ('FC') specifically cater for the members of the public services and the protection of pension rights of members of the public services. Pursuant to the clear provision of art. 132(3) of the FC, public* G *service shall not be taken to comprise the office of Members of either House of Parliament.*

STATUTORY INTERPRETATION: *Construction of statute – Intention of* H *Parliament – Claim by retired Members of Parliament ('MPs') for revision of pensions upon coming into force of Members of Parliament (Remuneration) (Amendment) Act 2015 – Whether Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 have retrospective effect – Whether entitlement to pension contingent right – Whether right protected by s. 30(1)(b) of Interpretation Acts 1948 and 1967*

I ***STATUTORY INTERPRETATION:*** *Construction of statute – Interpretation – Amendment to Interpretation Acts 1948 and 1967 ('Acts') – Whether amendment to long title changed character of Acts – Whether no longer confined to merely*

interpreting words and phrases of statutes – Whether confers legislative power to delegated authority to make subsidiary legislation with retrospective effect – Whether purpose and object of Acts to be read into amended s. 20 of Acts – Whether amended s. 20 of Acts dispensed need for express power by parent Act to legislate retrospectively

The respondents, former Members of Parliament ('MPs') who had retired before the coming into force of the Members of Parliament (Remuneration) (Amendment) Act 2015 ('2015 Amendment'), sought a declaration that, as retired MPs, they possessed the right for their pensions to be recomputed and revised in accordance with the increase of salary of MPs pursuant to the 2015 Amendment. The 2015 Amendment, which was gazetted on 9 July 2015, came into force on 1 January 2015. The High Court dismissed the respondents' application. However, on appeal, the Court of Appeal allowed the respondents' appeal on the grounds that the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 ('2015 Order') did not have a retrospective effect. Hence, this appeal on the questions, *inter alia*: (i) in view of the subsequent amendments made to the long title of the Interpretation Acts 1948 and 1967 ('Interpretation Acts'), s. 20 and insertion of the new s. 17A *vide* the Interpretation (Amendment) Act 1997 ('Act A996'), whether s. 20 of the Interpretation Acts, after its amendment, has dispensed with the need for an express power to be given by the parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its parent Act ('question 1'); (ii) whether the decision in *Kerajaan Malaysia v. Wong Pot Heng & Anor* ('*Wong Pot Heng*') which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act' is no longer binding in view of the subsequent amendments made to the long title, s. 20 of the Interpretation Acts and insertion of new s. 17A ('question 2'); (iii) whether the previous MP's entitlement to pension under the old para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 ('First Schedule to 1980 Act') is an accrued or acquired right which is saved or protected by s. 30(1)(b) of the Interpretation Acts, at the time when the 2015 Order was made on 16 February 2015 ('question 3'); (iv) whether such previous MP's entitlement to pension under the old s. 20 of the First Schedule to 1980 Act is a contingent right and neither saved nor protected by s. 30(1)(b) of the Interpretation Acts ('question 4'); (v) whether the unaccrued inchoate right to receive an increased pension which was not saved by s. 30(1)(b) of the Interpretation Acts can be modified or extinguished by retrospective amendment ('question 5'); (vi) in view of the amendment to the long title of the Interpretation Acts *vide* Act A996, whether the scope and character of the Interpretation Acts is not merely limited to meanings of words used in written law/interpreting words and phrases of the statutes ('question 6').

Held (allowing appeal with no order as to costs)
Per Hasnah Mohammed Hashim CJ (Malaya) delivering the judgment of the court:

(1) The intention of the Legislature was clear. By s. 3(2) of the Act A996, the amended s. 20 is to take effect retrospectively from 18 May 1967, *ie*, to coincide with the commencement date of the Interpretation Acts itself. Section 30(1) of the Interpretation Acts affords 'general savings for previous operation'. This 'general savings' applies 'unless the contrary intention appears' and 'is by its nature intended to make express savings unnecessary'. Hence, the 'general savings' in the Interpretation Acts may be displaced by 'specific savings' in the repealing Act. The requirement of 'unless contrary intention appears' serves as the same basis of the presumption against retrospectivity: an amending Enactment is generally presumed to change the relevant law only from the time of the Enactment's commencement. (paras 21, 23, 25 & 27)

(2) Section 3(6) of the 2015 Order evinces incontrovertible 'contrary intention' that the 'general savings' in s. 30(1)(b) of the Interpretation Acts and the clear intent of the Legislature is to incorporate the 'specific savings' in the 2015 Order. Therefore, after 1 January 2014, any pre-existing 'right' to the previous method for recomputation of pension and derivative pension following the pre-amendment para. 20 was extinguished by s. 3(6)(b) of the 2015 Order. Section 3(6)(a) preserves the 'right to receive a pension that was in proportion to the then current salaries of serving parliamentarians' up until 31 December 2013. However, after 1 January 2014, such 'right' was modified by s. 3(6)(b). (paras 37 & 40)

(3) The amendment to the long title of the Interpretation Acts changed the character of the Act, as it is no longer confined to merely interpreting words and phrases of the statutes, but shall have the legislative power to provide a delegated authority to make a subsidiary legislation with retrospective effect, as reflected from the new s. 20 of the Act. In the light of ss. 15 and 17A of the Interpretation Acts, the purpose and object of the Act should be read into s. 20 of the Act after its amendment in order to give it the meaning as intended by Parliament when it enacted Act A996. The proposition that s. 20 of the Interpretation Acts, after its amendment, has never dispensed with the need for an express power to be given by the parent Act and that the delegated authority is not entitled to legislate retrospectively in the absence of any express provision in its parent Act, would render the amended new s. 20 and other amended provisions in the Interpretation Acts futile, otiose, in vain and nugatory. Hence, the decision in *Wong Pot Heng* is no longer binding. Questions 1, 2 and 6 were thus answered in the affirmative. (paras 45, 46, 48 & 49)

(4) The purported adjustment of pension based on the increase of salaries was not an accrued nor acquired right, but merely a contingent right that depended on the occurrence of specified event, *ie*, salary revision, or a merely inchoate right that had not fully developed, matured or vested, which was not covered nor saved by the provision of s. 30(1)(b) of the Interpretation Acts. When the 2015 Order was made, the right of the respondents to receive a pension that was adjusted in accordance with the increase in salaries had not yet accrued. In fact, the principal Act was amended to increase the salaries of currently serving MPs three months after the 2015 Order. Therefore, question 3 was answered in the negative while questions 4 and 5 were answered in the affirmative. (paras 54, 56 & 62)

(5) Paragraphs 20(1) and (2) of the First Schedule to the 1980 Act are not unconstitutional as they have not infringed the respondents' alleged constitutional rights under arts. 132, 147 and 160(2) of the Federal Constitution ('FC'). Articles 132 and 147 are specifically to cater for the members of the public services and the protection of pension rights of members of the public services. The express provisions of art. 132(3) read together with art. 132(1) of the FC clearly excluded the office of member of either House of Parliament from the list/category of public services. There is therefore no ambiguity as far as the provisions of arts. 132(1), (3) and 147(1) of the FC are concerned. (paras 67, 69 & 74)

(6) The constitutionality of the FC is considered from the perspective of the Constitution itself, and it is not to be interpreted by reference to other statutes. The Pensions Adjustment Act 1980 ('PAA') or the Parliamentary Service Act 1963 ('PSA') (repealed), each being a subsidiary legislation *qua* the FC, could not be interpreted in such a way as to fill any *lacuna* (if at all there is) in the FC. Neither could the PAA or the PSA be competent legal instruments to confer the status of members of the public services to MPs under arts. 132 and 147 of the FC. The respondents started serving as MPs after the date of repeal of the PSA, wherein effective 20 November 1992, the category of public service mentioned in s. 2 of the PAA shall no longer include the parliamentary service referred to in the PSA. Therefore, there will be no issue that the amendment to para. 20 of the First Schedule to the 1980 Act had resulted in a 'less favourable situation' to the respondents as guaranteed by art. 147(1) of the FC. (paras 72, 73, 79, 80 & 81)

Bahasa Melayu *Headnotes*

Responden-responden, bekas Ahli Parlimen yang telah bersara sebelum Akta Ahli Parlimen (Saraan) (Pindaan) 2015 ('Pindaan 2015') berkuat kuasa, memohon deklarasi bahawa, sebagai Ahli Parlimen yang telah bersara, berhak untuk pencen mereka dihitung dan disemak semula berikutan

kenaikan gaji Ahli Parlimen menurut Pindaan 2015. Pindaan 2015, yang diwartakan pada 9 Julai 2015, mula berkuat kuasa pada 1 Januari 2015. Mahkamah Tinggi menolak permohonan responden-responden. Walau bagaimanapun, atas rayuan, Mahkamah Rayuan membenarkan rayuan responden-responden atas alasan-alasan bahawa Perintah Ahli Parlimen (Saraan) (Pindaan Jadual Pertama) 2015 ('Perintah 2015') tiada kesan retrospektif. Oleh itu, rayuan ini atas soalan-soalan: (i) berikutan pindaan terkemudian pada tajuk panjang Akta Tafsiran 1948 dan 1967 ('Akta Tafsiran'), s. 20 Akta Tafsiran dan kemasukan s. 17A baharu melalui Akta Tafsiran (Pindaan) 1997 ('Akta A996'), sama ada s. 20 Akta Tafsiran, selepas pindaan, telah mengetepikan keperluan pemberian kuasa jelas bawah Akta Induk dan kuasa yang diwakilkan berhak membuat undang-undang secara kebelakangan walaupun tiada peruntukan jelas dalam Akta Induk ('soalan 1'); (ii) sama ada keputusan dalam *Kerajaan Malaysia v. Wong Pot Heng & Anor*, yang menyebut bahawa 'satu perundangan subsidiari hanya boleh dibuat secara retrospektif jika itu diperuntukkan oleh kuasa jelas dalam, atau dengan implikasi perlu daripada Akta Induk' tidak lagi mengikat berikutan pindaan terkemudian yang dibuat pada tajuk panjang, s. 20 Akta Tafsiran dan kemasukan s. 17A baharu ('soalan 2'); (iii) sama ada hak Ahli-ahli Parlimen terdahulu bawah perenggan 20 lama Jadual Pertama Akta Ahli Parlimen (Saraan) 1980 ('Jadual Pertama Akta 1980') adalah hak terakru atau diperoleh yang diselamatkan atau dilindungi oleh s. 30(1)(b) Akta Tafsiran, pada masa Perintah 2015 dibuat pada 16 Februari 2015 ('soalan 3'); (iv) sama ada hak Ahli-ahli Parlimen terdahulu sedemikian untuk pencen bawah s. 20 lama Jadual Pertama Akta 1980 adalah hak yang bergantung dan tidak diselamatkan atau dilindungi oleh s. 30(1)(b) Akta Tafsiran ('soalan 4'); (v) sama ada hak tidak terakru yang belum sempurna untuk penerimaan pencen yang lebih tinggi yang tidak diselamatkan bawah s. 30(1)(b) Akta Tafsiran boleh diubah atau dipadamkan dengan pindaan kebelakangan ('soalan 5'); (vi) berikutan pindaan pada tajuk panjang Akta Tafsiran melalui Akta A996, sama ada skop dan sifat Akta Tafsiran bukan hanya terhad pada maksud perkataan-perkataan yang digunakan dalam undang-undang bertulis/tafsiran perkataan-perkataan dan frasa-frasa dalam statut ('soalan 6').

Diputuskan (membenarkan rayuan tanpa perintah untuk kos)
Oleh Hasnah Mohammed Hashim HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Niat Badan Perundangan adalah jelas. Melalui s. 3(2) Akta A996, s. 20 yang dipinda berkuat kuasa secara kebelakangan dari 18 Mei 1967, iaitu, untuk bersesuaian dengan tarikh permulaan Akta Tafsiran. Seksyen 30(1) Akta Tafsiran memberi 'perlindungan umum daripada penggunaan sebelumnya'. 'Perlindungan umum' ini diguna pakai 'kecuali niat bertentangan wujud' dan 'diniatkan untuk menjadikan perlindungan secara langsung tidak perlu'. Oleh itu, 'perlindungan

umum' dalam Akta Tafsiran boleh digantikan oleh 'perlindungan spesifik' dalam Akta yang meminda. Keperluan 'kecuali niat bertentangan wujud' digunakan dalam asas yang sama dengan anggapan bertentangan kebelakangan; Enakmen yang meminda secara umumnya dianggap menukar undang-undang relevan hanya dari masa permulaan Enakmen itu.

(2) Seksyen 3(6) Perintah 2015 menampakkan 'niat bertentangan' yang tidak dapat dipertikaikan bahawa 'perlindungan umum' dalam s. 30(1)(b) Akta Tafsiran dan niat jelas Badan Perundangan adalah untuk memasukkan 'perlindungan spesifik' dalam Perintah 2015. Oleh itu, selepas 1 Januari 2014, apa-apa 'hak' yang wujud sebelumnya untuk kaedah penghitungan semula pencen dan pencen terbitan berikutan pindaan perenggan 20 telah dipadamkan oleh s. 3(6)(b) Perintah 2015. Seksyen 3(6)(a) memelihara 'hak untuk menerima pencen yang berpadanan dengan gaji semasa tempoh perkhidmatan Ahli Parlimen' sehingga 31 Disember 2013. Walau bagaimanapun, selepas 1 Januari 2014, 'hak' sedemikian diubah oleh s. 3(6)(b).

(3) Pindaan pada tajuk panjang Akta Tafsiran menukar sifat Akta itu, kerana itu tidak lagi terhad semata-mata untuk mentafsir perkataan-perkataan dan frasa-frasa dalam statut, tetapi mempunyai kuasa perundangan untuk memperuntukkan kuasa yang diwakilkan untuk menjadikan perundangan subsidiari mempunyai kesan kebelakangan, seperti yang dibayangkan daripada s. 20 baharu Akta itu. Berikutan ss. 15 dan 17A Akta Tafsiran, tujuan dan niat Akta itu perlu dibaca menjadi s. 20 Akta selepas pindaannya untuk memberi maksud yang diniatkan Parlimen apabila menggubal Akta A996. Cadangan bahawa s. 20 Akta Tafsiran, selepas pindaan, tidak pernah mengetepikan keperluan untuk kuasa jelas diberi oleh Akta Induk dan bahawa kuasa yang diwakilkan tidak berhak menggubal secara kebelakangan dalam ketiadaan peruntukan jelas Akta Induk, akan menjadikan s. 20 baharu yang dipinda itu dan peruntukan-peruntukan dipinda lain dalam Akta Tafsiran tidak berguna, lewah dan sia-sia. Maka, keputusan dalam kes *Wong Pot Heng* tidak lagi mengikat. Oleh itu, soalan-soalan 1, 2 dan 6 dijawab secara afirmatif.

(4) Pelarasan pencen yang dikatakan berdasarkan kenaikan gaji bukan hak terakru atau diperoleh, tetapi hak luar jangka yang bergantung pada berlakunya sesuatu peristiwa, iaitu, semakan gaji, atau hanya hak belum sempurna yang belum muktamad, matang atau tertanam, yang tidak dirangkumi atau diselamatkan oleh peruntukan s. 30(1) Akta Tafsiran. Apabila Perintah 2015 dibuat, hak responden-responden untuk menerima pencen yang diselaraskan menurut kenaikan gaji, belum terakru. Hakikatnya, Akta utama dipinda untuk menaikkan gaji Ahli-ahli Parlimen yang sedang berkhidmat tiga bulan selepas Perintah 2015. Oleh itu, soalan 3 dijawab secara negatif, dan soalan-soalan 4 dan 5 dijawab secara afirmatif.

(5) Perenggan 20(1) dan (2) Jadual Pertama Akta 1980 berperlembagaan kerana itu tidak mencabul hak perlembagaan responden-responden yang dikatakan bawah per. 132, 147 dan 160(2) Perlembagaan Persekutuan ('PP'). Perkara 132 dan 147 dikhususkan untuk merangkumi penjawat awam dan pelindungan hak pencen untuk penjawat awam. Peruntukan jelas per. 132(3) dibaca bersama-sama per. 132(1) PP jelas mengecualikan ahli-ahli kedua-dua Dewan Parlimen daripada senarai/kategori perkhidmatan awam. Oleh itu, tiada kekaburan setakat yang berkait dengan peruntukan per. 132(1), (3) dan 147(1) PP.

(6) Keperlembagaan PP dipertimbangkan daripada perspektif Perlembagaan itu sendiri, dan itu tidak boleh ditafsir dengan rujukan pada statut-statut lain. Akta Penyelarasan Pencen 1980 ('APP') atau Akta Perkhidmatan Parlimen 1963 ('Akta 1963') (dimansuhkan), setiap satunya sebagai perundangan subsidiari daripada PP, tidak boleh ditafsir untuk mengisi kelompongan (jika ada) dalam PP. Tambahan lagi, APP atau Akta 1963 bukan instrumen undang-undang yang kompeten untuk memberi status keahlian penjawat awam untuk Ahli-ahli Parlimen bawah per. 132 dan 147 PP. Responden-responden memulakan khidmat sebagai Ahli-ahli Parlimen selepas tarikh pemansuhan APP, di mana bermula 20 November 1992, kategori perkhidmatan awam yang dinyatakan dalam s. 2 APP tidak lagi menyertakan perkhidmatan Parlimen yang dirujuk dalam Akta 1963. Oleh itu, tidak wujud isu bahawa pindaan perenggan 20 Jadual Pertama Akta 1980 mengakibatkan 'keadaan kurang menguntungkan' pada responden-responden seperti yang dijamin oleh per. 147 PP.

Case(s) referred to:

Abdul Salam Husin v. Majlis Angkatan Tentera & Anor [2011] 2 CLJ 1 FC ***(refd)***

Government Of Malaysia v. V R Menon [1990] 1 CLJ 718; [1990] 1 CLJ (Rep) 115 SC ***(refd)***

Kerajaan Malaysia v. Wong Pot Heng & Anor [1997] 2 CLJ 188 FC ***(ovrd)***

Syed Ibrahim Syed Mohd & Ors v. Esso Production Malaysia Incorporated [2004] 1 CLJ 889 CA ***(ovrd)***

The Government Of Malaysia & Anor v. Aminah Ahmad [2023] 8 CLJ 1 FC ***(dist)***

Legislation referred to:

Federal Constitution, arts. 132(1), (3), 147(1), 160(2)

Interpretation Acts 1948 and 1967, ss. 3(2), 15, 17A, 20, 30(1)(b)

Members of Parliament (Remuneration) Act 1980, ss. 2, 3(1), 4, 7, First Schedule para. 20(1), (2)

Interpretation Act 1978 [UK], s. 16

For the appellant - Rahazlan Affendi Abdul Rahim, Liew Horng Bin & Nur Syazwani Abdul Aziz; AG's Chambers

For the respondents - Krishna Dallumah, Steven Thiru, Shankar Ram Asnani, Indran Kumaraguru, Nasuha Badrul Din, Chong Jen Hui & Yong Yoong Hui; M/s Krishna Dallumah & Indran

[Editor's note: For the Court of Appeal judgment, please see Datuk Hj Idris Hj Bujang & Anor v. Ketua Pentadbir Parlimen Malaysia & Ors [2024] 3 CLJ 493 (overruled); For the High Court judgment, please see Hj Idris Hj Buang & Anor v. Ketua Pentadbir Parlimen Malaysia & Ors [2020] CLJU 644; [2020] 1 LNS 644 (affirmed).]

Reported by S Barathi

JUDGMENT

Hasnah Mohammed Hashim CJ (Malaya):

Introduction

[1] This appeal raises the question whether retired Members of Parliament are entitled to a revision of their pensions when there is a revision of the salary of serving Members of Parliament.

[2] On 2 July 2024, this court granted leave in respect of the following questions:

Question 1

In view of the subsequent amendments made to the long title, s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s. 17A *vide* Act A996, whether s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) after its amendment has dispensed with the need for an express power to be given by the parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its parent Act?

Question 2

Whether the decision in *Kerajaan Malaysia v. Wong Pot Heng & Anor* [1997] 2 CLJ 188; [1997] 1 MLJ 437 which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its parent Act is no longer binding in view of the subsequent amendments made to the long title, s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s. 17A *vide* Act A996?

Question 3

Whether the previous Members of Parliament's entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under para. 2 or a derivative pension granted under paras. 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is an accrued or acquired right which is saved or protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388), at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015?

A Question 4

Whether such previous Members of Parliament's entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388)?

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Question 5

Whether the unaccrued inchoate right to receive an increased pension which was not saved by s. 30(1)(b) of the Interpretation Acts 1948 And 1967 (Act 388) can be modified or extinguished by retrospective amendment?

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Question 6

In view of amendment to long title of the Interpretation Acts 1948 and 1967 (Act 388) vide Act A996, whether the scope and character of the Act 388 is not merely limited to meanings of words used in written law/ interpreting words and phrases of the statutes?

D

Question 7

Whether the unaccrued inchoate right to receive an increased pension which was not saved by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment?

E

Question 8

In view of amendment to long title of the Interpretation Acts 1948 and 1967 (Act 388) *vide* Act A996, whether the scope and character of the Act 388 is not merely limited to meanings of words used in written law/ interpreting words and phrases of the statutes?

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The Factual Background

[3] The respondents are former Members of Parliament (MPs) and retired before the coming into force the Members of Parliament (Remuneration) (Amendment) Act 2015 (Act A1491) (2015 Amendment). *Vide* an originating summons filed in the High Court the respondents sought a declaration that as retired MPs they possessed the right for their pensions to be recomputed and revised in accordance with the increase of salary of MPs pursuant to the 2015 Amendment. The 2015 Amendment was gazetted on 9 July 2015 however, it came into force on 1 January 2015. The reliefs sought are as follows:

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(i) Deklarasi bahawa Pemohon-Pemohon yang disenaraikan Jadual A yang semuanya pernah merupakan ahli Senat/Parlimen dan/atau kini merupakan ahli Senat/Parlimen yang telah bersara), berhak untuk menerima dan dibayar pencen yang dikira dan disemak semula ('recomputed and revised pensions') masing-masing berdasarkan kenaikan upah ahli Senat/Parlimen menurut Akta Pindaan Ahli-Ahli Parlimen (Upah) 2015 yang digazetkan pada 1 Januari 2015;

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(ii) Perintah selanjutnya bahawa Responden-Responden hendaklah membayar Pemohon-Pemohon yang disenaraikan Jadual A, pencen yang dikira dan disemak semula dengan serta merta dari tarikh perintah ini dan terus membayarkan mereka pencen yang dikira dan disemak semula masing-masing seterusnya selepas ini;

(iii) Perintah bahawa Responden-Responden hendaklah membayar Pemohon-Pemohon yang disenaraikan Jadual A, segala jumlah tertunggak pencen yang dikira dan disemak semula masing-masing bersama dengan faedah yang dikira pada kadar 5% setahun mulai dari tarikh 1 Januari 2015 sehingga tarikh perintah ini.

[4] Before the 2015 Amendment, the monthly salaries of the Members of the Senate and the House of Representatives were RM4,112.79 and RM6,508.59 respectively. The aforesaid amendment increased the salaries to RM11,000 and RM16,000 respectively.

[5] The High Court dismissed the respondents' OS for the following reasons:

(i) the wordings of the new sub-paras. 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 are clear and unambiguous and this court must give its effect. The provisions of the 2015 Amendment are also clear and unambiguous that it only applies to serving Members of Parliament as at 1 January 2015, where the Act came into operation and clearly are not applicable to the respondents. The respondents cannot rely upon sub-paras. 20(1) and 20(2) of the First Schedule which has been amended and ceased to be the law;

(ii) the existing sub-paras. 20(1) and 20(2) of the First Schedule are not unconstitutional. The applicants have not shown any transgression of any constitutional principles. The pensions received by the respondents have not been reduced or affected in any manner. Instead, as of 1 January 2014, the respondents' pensions would be increased 2% annually without having to wait for any revised salary of Members of Parliament. The new or existing law relating to pension is not less favourable to the respondents as envisaged under art. 147(1) of the Federal Constitution (FC); and

(iii) article 132 and art. 160 of the FC relates to public services and thus inapplicable to the respondents. The doctrine of legitimate expectation raised by the respondents is also inapplicable as the respondents' claim is not recognised by law.

[6] The Court of Appeal took a divergent approach and allowed the respondents' appeal on the grounds that the 2015 Order did not have a retrospective effect. The reasons of the Court of Appeal will be further discussed in this judgment.

A **Legislative Framework**

[7] By the amendment to the Members of Parliament (Remuneration) Act 1980 (Act 237), sub-s. 3(1) was amended as follows:

(i) in para. (a), by substituting for the words "four thousand one hundred and twelve ringgit and seventy-nine sen" the words "eleven thousand ringgit"; and

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(ii) in para. (b), by substituting for the words "six thousand five hundred and eight ringgit and fifty-nine sen" the words "sixteen thousand ringgit".

[8] Section 4 of the Act was also amended by substituting for the words "fourteen thousand nine hundred and seven ringgit and twenty sen" the words "thirty-one thousand ringgit"; and in paras. (c) and (d), by substituting for the words "ten thousand eight hundred and forty-seven ringgit and sixty-five sen" the words "twenty-two thousand ringgit".

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D **[9]** Notwithstanding s. 7 of the principal Act, the monthly salaries and allowances specified in the amendments to ss. 3 and 4 of the principal Act in ss. 2 and 3 of this Act, and payable, shall commence from 1 January 2015 or from the date of appointment or election, whichever is the later, of the Members of Parliament, the President or Deputy President of the Senate and the Speaker or Deputy Speaker of the House of Representatives, as the case may be.

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[10] Before the amendment in Act A1491, sub-paras. 20(1) and 20(2) of the First Schedule of the Members of Parliament (Remuneration) Act 1980 has been amended as follows:

F (i) any pension granted under para. 2 or derivative pension granted under paras. 5 or 6 shall be adjusted each year with an increment of two percent and shall be payable from January of each year; and

(ii) subject to sub-para. (1) where a member is granted a pension only upon attaining the age of 50 years by reason of him becoming a member for the first time on or after 1 July 1990 and has ceased to be a member upon completing 36 months of reckon able service but has not attained the age of 50 years on the date he ceased to be a member, his pension shall be adjusted by an increment of two percent beginning from the second year he is granted the pension.

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H **[11]** These new provisions came into operation on 1 January 2014. The 'enabling power' point concerned with s. 20 of the Interpretation Acts 1948 and 1967 (at para. 31 of the Court of Appeal's (COA) grounds of judgment (GOJ)). The Court of Appeal relied entirely on the Federal Court's decision in *Kerajaan Malaysia v. Wong Pot Heng & Anor* [1997] 2 CLJ 188; [1997] 1 MLJ 437 (*Wong Pot Heng*) and the subsequent Court of Appeal decision in *Syed Ibrahim Syed Mohd & Ors v. Esso Production Malaysia Incorporated* [2004] 1 CLJ 889; [2004] 2 MLJ 49 (*Syed Ibrahim*). Such reliance on the

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aforementioned cases by the Court of Appeal was misplaced because the legislature had through sub-ss. 4 and 8 of the Interpretation (Amendment) Act 1997 (Act A996) amended s. 20 of the Interpretation Acts). Act A996 was published in *Gazette* on 24 July 1997 and the commencement date of the amendment was to retrospectively take effect from 18 May 1967 as provided by the deeming clause in s. 3(2) of Act A996. Act A996 was necessitated to overcome *Wong Pot Heng*. The intention was made abundantly clear by the Legislature as can be seen in the explanatory statement of the Bill as is observed that the Court of Appeal in *Syed Ibrahim* refused to give effect to the amendment made to s. 20 *vide* Act A996 for the following reasons (para. [30], [2004] 2 MLJ at pp. 77 to 78):

> It was contended in *Wong Pot Heng* even though the Yang di-Pertuan Agong was not provided with the power to make subsidiary legislation with retrospective effect by the parent Act, he could do so by s. 20 of the Interpretation Acts which empowered him to do so. This contention was rejected by the High Court and the Federal Court. The Federal Court went on to state that the Interpretation Acts are nothing more than interpreting words and phrases of the statutes. They have no legislative power to provide a person to make a subsidiary legislation with retrospective effect. The power for a person to make a subsidiary legislation must be provided by the parent Act itself and not by the provisions of the Interpretation Acts ... Though s. 20 of the Interpretation Acts had been amended by the addition of several words it would not change their character as Interpretation Acts. For that reason, the decision of *Wong Pot Heng* is still binding and the amendment to s. 20 had not changed ...

[12] The Federal Court in *Wong Pot Heng* enunciated that a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its parent Act. Such power could not be provided by s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and that the Interpretation Acts are nothing more than interpreting words and phrases of the statutes which have no legislative power to provide a person to make a subsidiary legislation with retrospective effect.

[13] Hence, with the amendment to Act 388 *via* the Interpretation (Amendment) Act 1997 (Act A996), *Wong Pot Heng*'s case is no longer binding. Consequently, the position of the law and character of the Act 388 had since changed with the amendments as explained in the explanatory statement to the Bill (D.R. 18/97) and Hansard:

(i) the amendment to the long title of the Act 388 is intended to reject the interpretation that Act 388 is only statute concerned, *prima facie*, with meaning of words used in statute so that the same word can have uniform meaning as far as possible, so that the same meaning need not be repeated in various statutes with much tedium; and

(ii) the amendment to s. 20 will have the effect where a power is given in any written law to make subsidiary legislation, that legislation may be made to operate retrospectively despite the absence of express provision to that effect in the written law under which the legislation is made.

[14] The explanatory statement to the Bill (D.R. 18/97) quoted *Wong Pot Heng*:

> 5. The decision of the Federal Court in the *Wong Pot Heng*'s case has made it necessary for an amendment to be made to section 20, in particular, and to sections 23 and 25 of Act 388 *to make it clear that where a power is given in any written law to make subsidiary legislation, that legislation may be made (subject to the proviso mentioned above) to operate retrospectively despite the absence of express provision to that effect in the written law under which the legislation is made ...*
>
> 7. The amendment to the long title of Act 388 (as proposed in clause 4) *seeks to make it clear that the scope of Act 388 is not merely limited to the meanings of words used in written laws.*
>
> 9. Clause 7 of this Bill seeks to introduce a new section 17A into Act 388 which provides that an act ought to be interpreted by giving it the construction which would promote the underlying purpose of the Act.
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> (emphasis added)

[15] It was highlighted by the Deputy Minister of the Prime Minister's Department that since the coming into force of s. 20 of the Act 388 on 18 May 1967, countless subsidiary legislations have been made to operate retrospectively. Most of the subsidiary legislations that has retrospective effect is the exemption order. For example, exemption from income tax, sales tax, service tax, customs duty and stamp duty. He also explained that it is not practical to amend all the Acts and Ordinances that are or are still in force to include provisions that become necessary because of *Wong Pot Heng*'s case. Therefore, the only practical option is to amend Act 388.

The Court Of Appeal

[16] The Court of Appeal's reasons are as follows:

(i) the respondents were possessed of the right to receive a pension that was in proportion to the then-current salaries of serving Parliamentarians. This was clearly a pre-existing and accrued right (even if the right to receive 167.46% increase had not yet accrued). The Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388);

(ii) a subsidiary legislation can have retrospective effect if it only affects matters of procedure. Where, however, the subsidiary legislation affects vested or accrued rights or privileges, the subsidiary legislation can only have retrospective effect if the principal Act expressly or by necessary implication provides that the subsidiary legislation may take effect retrospectively (Re: para. 63 of the COA GOJ);

(iii) the Court of Appeal agreed with the Senior Federal Counsel that the right to receive a pension that was adjusted in accordance with the increase in salaries effected through the 2015 Amendment Act had not yet accrued as at 1 January 2014. The unaccrued inchoate right to receive an increased pension was not saved by the s. 30(1)(b) of the Interpretation Acts 1948 and 1967, the material portion of which reads as follows: (1) The repeal of a written law in whole or in part shall not – ... (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law;

(iv) the respondents were possessed of the right to receive a pension that was in proportion to the then-current salaries of serving Parliamentarians. This was a clearly a pre-existing and accrued right (even if the right to receive the 167.46% increase had not yet accrued). The 2015 Order could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Re: para. 60 COA GOJ);

(v) a vested or an accrued right cannot be taken away by the repeal of a written law because of the protection given by s. 30 of the Interpretation Acts 1948 and 1967 (Act 388). The effect of amendment to laws must be construed in accordance with s. 30(1) of the Interpretation Acts 1948 and 1967 (Act 388), which among others preserves rights and privileges accrued under the repealed provisions;

(vi) the crucial point to be determined is that whether at the time of the subsidiary legislation with retrospective effect is deemed to come into force, the related right is an accrued or a vested or an acquired right of the respondents or otherwise. If it is an accrued or a vested right, then it will be saved and protected by s. 30(1)(b) of Act 388;

(vii) *vide* the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 (P.U. (A) 38), the old para. 20 was substituted and the new para. 20 of the First Schedule which is deemed to have come into operation on 1 January 2014 was introduced. It was only some three months after the 2015 Order was gazetted, the principal Act was amended to significantly increase the salaries of currently serving Members of Parliament;

(viii) at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the previous Members of Parliament's entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a member are revised, the salary on which a pension granted under para. 2 or a derivative pension granted under paras. 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is not an accrued or acquired right which is saved or protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388);

(ix) previous Members of Parliament's entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388); and

(x) the unaccrued inchoate right to receive an increased pension which was not saved by s. 30(1)(b) of the Interpretation Acts 1948 And 1967 (Act 388) can be modified or extinguished by retrospective amendment.

Our Decision

Whether The Amendments To Sub-paragraphs 20(1) And 20(2) Of The First Schedule To The Members Of Parliament (Remuneration) Act 1980 Is Unconstitutional

[17] We are of the view that the new sub-paras. 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) are not unconstitutional and have not infringed the respondents' alleged constitutional rights under arts. 132, 147 and 160(2) of the FC. Our reasons are as follows.

[18] Articles 132 and 147 of the FC are not applicable to the respondents as both the articles of the FC are specifically to cater for the members of the public services and protection of pension rights of members of the public services. Article 132 of the FC provides as follows:

Public services

(1) For the purposes of this Constitution, the public services are:

(a) the armed forces;

(b) the judicial and legal service;

(c) the general public service of the Federation;

(d) the police force;

(e) (Repealed);

(f) the joint public services mentioned in Article 133;

(g) the public service of each State; and

(h) the education service,

(3) The public service shall not be taken to comprise –

(a) ...

(b) *the office of President, Speaker, Deputy President, Deputy Speaker or member of either House of Parliament or of the Legislative Assembly of a State* ... (emphasis added)

[19] Article 147(1) of the FC further provides as follows:

Protection of pension rights

The law applicable to any pension, gratuity or other like allowance (in this Article referred to as an "award") granted to a member of any of the public services, or to his widow, children, dependant or personal representatives, shall be that in force on the relevant day or any later law not less favourable to the person to whom the award is made.

[20] By virtue of art. 132(3) of the FC, a member of either House of Parliament is not and cannot be regarded as being part of the public service.

[21] The intention of the legislature is clear that by s. 3(2) of the Act A996 the amended s. 20 is to take effect retrospectively from 18 May 1967, *ie*, to coincide with the commencement date of the Interpretation Acts itself. The Minister had articulated clearly in Parliament that the amended s. 20 of the Act was meant to validate past actions taken under all subsidiary legislations which were made retrospectively in the absence of express enabling powers in the parent Act. It is therefore clear that s. 20 was amended by Act A996 to reflect the unquestionable intention of the Legislature that the amended provision of s. 20 should be treated as a provision which affords the requisite enabling power to allow subsidiary legislation to be made with retrospective effect.

[22] The Court of Appeal agreed that the right to receive a pension that was adjusted in accordance with the increase in salaries effected through the 2015 Amendment Act had not yet accrued as at 1 January 2014. For this reason, the unaccrued inchoate right to receive an increase pension was not saved by the s. 30(1)(b) of the Interpretation Acts. However, the Court of Appeal in the same breath also held that at the time the amendment to para. 20 was expressed to take effect, and the respondents were possessed of the right to receive a pension that was in proportion to the then-current salaries of serving Parliamentarians. It was held that this was clearly a pre-existing and accrued right, even if the right to receive the 167.46% increase had not yet

accrued. Therefore, the Court of Appeal concluded that the 2015 Order could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s. 30(1)(b) of the Interpretation Acts.

[23] Section 30(1) of the Interpretation Acts is in *pari materia* with s. 16 of the UK Interpretation Act 1978. This particular provision affords 'general savings for previous operation' that is the Interpretation Acts shall contain general savings for the previous operation of a repealed enactment (Re: section 8.13 at p. 299 *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn)). This 'general savings' in the Interpretation Acts applies 'unless the contrary intention appears' and 'is by its nature intended to make express savings unnecessary' (Re: section 8.13 at p. 300 Bennion).

[24] However, it must be emphasised that the important qualification is this: that the 'general savings' as appearing in the Interpretation Acts 'may be displaced' by 'specific savings' in the amending or repealing Act itself – 'specific savings may be made to deal with particular issues. In addition, the Interpretation Acts contain a number of general savings, although these may be displaced' (Re: section 8.11 at p. 297 *Bennion*). Section 16 of the UK Interpretation Act 1978, being a 'general savings', operates on the presumption that 'the repeal does not'.

[25] The requirement of 'unless contrary intention appears' serves as the same basis of the presumption against retrospectivity: an amending enactment is generally presumed to change the relevant law only from the time of the enactment's commencement. In the absence of a clear indication of a contrary intention in the protection of pension rights under art. 147 of the FC only applies to members of the public services as expressly provided under art. 132 of the FC and does not apply to the respondents who were not members of the public services.

[26] Specific savings expressly provided for in the amending Act or repealing Act may exemplify 'contrary intention' to place the 'general savings' prescribed by the Interpretation Acts. It may prove necessary in a particular case to supplement or vary the general statutory savings by particular savings. If an Act introduces new provisions and repeals existing ones with savings, the savings will not be effective to preserve anything the continued existence of which is incompatible with the new provisions. Since the question is always the intention of the legislator, a saving may be made not only expressly, but also by implication.

[27] The 'general savings' in the Interpretation Acts may be displaced by 'specific savings' in the repealing Act. This is explained in the Interpretation Act itself: "An Interpretation Act has been called a drafting convenience ..." Whether it is so stated or not, a provision of an Interpretation Act does not apply to an Enactment if the contrary intention appears from that Enactment;

and the Interpretation Acts itself will provide that its definitions apply only where no contrary intention appears. The courts and practitioners construing legislation also need to have in mind the current Interpretation Acts and any other statutory interpretation provisions.

[28] As former Members of Parliament, the respondents do not come within the ambit of protection given by art. 147 of the FC. The provisions of arts. 132(1), (3) and 147(1) of the FC are very clear without any ambiguity. It is the court's duty to give effect to those provisions without attempting to modify and qualify them particularly where there is no ambiguity. In *Abdul Salam Husin v. Majlis Angkatan Tentera & Anor* [2011] 2 CLJ 1 James Foong FCJ articulated:

> I wish to reiterate that it is the court's duty to give effect to the provisions of the Constitution and statutory law without attempting to modify and qualify it, particularly when there is no ambiguity ... In support of this proposition, I cite the often quoted passage by Barwick CJ of Australia in *Twist v. Randwick Municipal Council* [1976] 136 AIR 106:
>
> ... the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.

[29] The respondents relied on *The Government Of Malaysia & Anor v. Aminah Ahmad* [2023] 8 CLJ 1; [2023] 5 MLJ 32 (*Aminah Ahmad*'s case). *Aminah Ahmad*'s case is peculiar based on the facts and therefore must be distinguished:

(i) Aminah binti Ahmad, a pensioner who served the Government for more than 33 years, retired from the public service in September 2002;

(ii) in *Aminah Ahmad*'s case, challenges were made to the validity of certain amendments to the Pensions Adjustment Act 1980 (Act 238) on the ground that they are *ultra vires* art. 147 of the FC;

(iii) based on the long title of the Pensions Adjustment Act 1980 (Act 238) it is among others an Act to provide for the adjustment of pensions and other benefits of officers in the public service:

> An Act to provide for the adjustment of pensions and other benefits of officers in the public service and in statutory and local authorities and of the dependants of such officers, for the granting and adjustment of pensions and other benefits of the dependants of certain categories of such officers, and for matters related thereto.

(iv) both Act 238 and art. 147 of the FC concern about the officers/member of the public services and not those who are not members of such public services;

(v) articles 132 and 147 of the FC are specifically to cater for the members of the public services and protection of pension rights of members of the public services and nothing else;

(vi) pursuant to clear provision of art. 132(3) of the FC, the public service shall not be taken to comprise the office of member of either House of Parliament;

(vii) since both Act 238 and art. 147 of the FC are not applicable to the respondents. Mohd Azmi SCJ in *Government Of Malaysia v. VR Menon* [1990] 1 CLJ 718; [1990] 1 CLJ (Rep) 115 stated:

> The provision of Article 147(1) guarantees the additional pension benefits to the respondent only if the 1980 Act is applicable to him. Since it is not applicable to him, that would be the end of the matter.

[30] Thus, on the facts and the law *Aminah Ahmad*'s case is distinguishable from the present appeal before us. Pursuant to art. 132(3) of the FC, the respondents being previous Members of either House of Parliament are not members of the public services. We reiterate that the protection of pension rights under art. 147 of the FC only applies to members of the public services listed under art. 132 of the FC and does not apply to the respondents who were not members of the public services. Therefore, a situation of "not less favourable" or "not less favourable test" as clearly embodied in art. 147(1) of the FC is specifically referred to the award of pension granted to a member of any of the public service and not to the respondents who are not members of the public services as listed under arts. 132(1) and (3) of the FC.

[31] The respondents' claims are further unsustainable by virtue of the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 which has retrospective effect on 1 January 2014 as their claims are not rights which have already accrued when the 2015 Order was made on 16 February 2015. Such purported adjustment of pension based on the increase of salaries is not an accrued nor acquired right, but merely a contingent right that depends on the occurrence of specified event, *ie*, salary revision, or a merely inchoate right that has not fully developed, matured or vested, and therefore not saved by s. 30(1)(b) of the Act 388. The respondents' right be described as being:

(i) an immature right that is not ripe for enforcement (as through litigation) and which did not qualify as an enforceable claim;

(ii) a contingent right that depends on the occurrence of some specified event; and

(iii) an unconditional right not having become a completed, consummated right for present or future enjoyment.

[32] The right, privilege, obligation or liability that is not affected by the repeal of an Act or provisions of law is the right, privilege, obligation or liability which is already acquired, accrued or incurred under the repealed Act or repealed provisions and that something has been done to exert to such right, privilege, obligation or liability.

[33] The right of the respondents to receive a pension that was adjusted in accordance with the increase in salaries had not yet accrued at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015. It was only some three months after the 2015 Order was gazetted, the principal Act was amended to significantly increase the salaries of currently serving Members of Parliament. Savings do not apply to a mere right to take advantage of a repealed enactment and something must have been done or have occurred to cause a particular right to accrue under a repealed enactment.

[34] At the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the previous Members of Parliament's entitlement to pension under the former para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a member are revised, the salary on which a pension granted under para. 2 or a derivative pension granted under para. 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is not an accrued or acquired right which is saved or protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388).

[35] Such previous Members of Parliament's entitlement to pension under the former para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). The unaccrued inchoate right to receive an increased pension is not saved by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment.

[36] Thus, the new sub-paras. 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) are not unconstitutional and have not infringed the respondents' alleged constitutional rights under arts. 132, 147 and 160(2) of the FC. Any proposition that the amendments made to para. 20 of the First Schedule of the Members of Parliament (Remuneration) Act 1980 (Act 237) *vide* Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 (P.U.(A) 38) were void being in contravention of arts. 132, 147 and 160(2) of the FC is thus a non-starter.

[37] As we have alluded above s. 20 of the Interpretation Acts 1948 and 1967 was amended to cure the ambiguity and to remedy the weakness in s. 20 as identified by *Wong Pot Heng* the necessity for an express enabling power to make delegated legislation with retrospective effect. Act A996 was intended to validate past actions taken in reliance on the prevailing understanding of the pre-amendment of the aforesaid section. The said s. 20

was amended by the insertion of the following phrase confers the necessary enabling power for retrospective amendment to be made *vide* P.U.(A) 38. Hence, s. 3(6) of P.U.(A) 38 evinces incontrovertible 'contrary intention' that the 'general savings' in s. 30(1)(b) of the Interpretation Acts 1948 and 1967 the clear intent of the Legislature is to incorporate the 'specific savings' in P.U.(A) 38. Therefore, after 1 January 2014, any pre-existing 'right' to the previous method for recomputation of pension and derivative pension following the pre-amendment para. 20 is thus extinguished by s. 3(6)(b) of P.U.(A) 38.

[38] Section 3(6)(a) of P.U.(A) 38 preserves the existing 'right' of the member to any adjustment of 'pension or other benefits' which 'has not been made before 1 January 2014. If those exiting 'right' to adjustment of 'pension or other benefits' has not been made before 1 January 2014, 'such pension or other benefits shall first be adjusted in accordance with the First Schedule to the Act until 31 December 2013 as if all the paragraphs in the First Schedule to the Act, except para. 20, have been in force before 1 January 2014'.

[39] In other words, s. 3(6)(a) P.U.(A) 38, if there has been in existence past salary revision to the serving member before 1 January 2014, which entails the corresponding pension adjustment to the retired member, in situation where the corresponding pension adjustment not having been carried out by the relevant paying agency, such adjustment shall first be made until 31 December 2013. Past adjustment before 1 January 2014, if any, which has not been reflected in the actual pension of the member represents the 'existing right' of the member which is reserved by operation of s. 3(6)(a). Having so made the necessary adjustment as mandated by s. 3(6)(a) 'until 31 December 2013', the said section provides that 'the pensions and other benefits of member and their dependants shall, from 1 January 2014, be calculated based on para. 20 of the First Schedule to the Act as amended by this Order and shall be payable from that date'.

[40] Section 3(6)(a) indisputably preserves the 'right to receive a pension that was in proportion to the then current salaries of serving Parliamentarians' up until 31 December 2013. However, after 1 January 2014, such 'right' is modified by s. 3(6)(b). Section 3(6)(c) to (e) manifest the same intention.

[41] Thus, after 1 January 2014, the new method for recomputation of pension and derivative pension shall be adjusted each year with an increment of two percent and shall be payable from January of each year. Section 3(6)(a) P.U.(A) 38 preserves the 'existing right' of the previous method of recomputation of pension up until 31 December 2013. On and after 1 January 2014, the combined effect of s. 3(6)(b) to (e) extinguished that 'right' to the previous method of recomputation and substituted it with a new method of 2% yearly increment.

Questions 1, 2 And 6

[42] Questions 1, 2 and 6 are about the effect of amendments to the Interpretation Acts 1948 and 1967 (Act 388). The Court of Appeal relied heavily on the Federal Court case of *Wong Pot Heng*, which, among others, held that the Interpretation Acts 1948 and 1967 (Act 388) is nothing more than interpreting words and phrases of the statutes. It held that the said Act has no legislative power to provide for a subsidiary legislation with retrospective effect. As we have alluded, only the parent Act can provide for such power to make subsidiary legislation with retrospective effect, and it cannot be done *via* the provisions of the Act 388.

[43] Because of the *Wong Pot Heng*'s decision, the Interpretation (Amendment) Act 1997 (Act A996) was introduced. Amongst the amendments made were to:

(i) the long title;

(ii) section 20 of the Act; and

(iii) insertion of new s. 17A.

[44] The long title of an Act plays an important role in a statute/Act as it sets out the subject, scope and purpose of the statute/Act. The long title can be used in court as an aid to interpret the statute/Act. The declared purpose of the Interpretation Acts 1948 and 1967 (Act 388) as manifested in the long title to the Act was for the application, construction, interpretation and operation of written laws.

[45] The amendment made to the long title of the Act 388 makes it clear that the scope of the Act 388 is not limited merely to the meanings of words used in written laws. With the amendment to the long title, the character of the Act 388 has changed, as the Act is no longer confined to merely interpreting words and phrases of the statutes, but shall have the legislative power to provide a delegated authority (power) to make a subsidiary legislation with retrospective effect as reflected from new s. 20 of the Act.

[46] Further, the insertion of s. 17A by Act A996 is to emphasise that in construing a provision of an Act, due to regard must be had to the purpose or object of the Act. In the light of ss. 15 and 17A of the Interpretation Acts 1948 and 1967 (Act 388), the purpose and object of the Act 388 should be read into s. 20 of the Act 388 after its amendment in order to give it the meaning as intended by Parliament when it enacted Act A996.

[47] It cannot be gainsaid that the decision in *Wong Pot Heng* was premised on the old provisions of the long title and s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) prior to their amendment, that is to say, before the amendments to the long title, ss. 15 and 20 of the Interpretation Acts 1948 and 1967 (Act 388) and the insertion of new s. 17A *vide* Act A996. Therefore,

Wong Pot Heng's case is no longer binding and cannot stand after the amendment to Act 388 *via* Act A996. The amendments to Act 388 *via* Act A996 have changed the position of the law and character of the Act 388.

[48] We wish to reiterate that in the interpretation of statutes, it is the fundamental rule of interpretation that statutes should be expounded according to the intent of the Legislature/Parliament. Such intent of Parliament manifests strongly in the explanatory statement to the Bill (D.R. 18/97), which sought to amend the Interpretation Acts 1948 and 1967 (Act 388) and Hansard when it states:

(i) the amendment to the long title of the Act 388 is intended to reject the interpretation that Act 388 is only statute concern *prima facie* with meaning of words used in statute so that the same word can have uniform meaning as far as possible, so that the same meaning need not be repeated in various statutes with much tedium; and

(ii) the amendment to s. 20 will have the effect where a power is given in any written law to make subsidiary legislation, that legislation may be made to operate retrospectively despite the absence of an express provision to that effect in the parent Act under which the legislation is made.

[49] We emphasised that the proposition that s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) after its amendment has never dispensed with the need for an express power to be given by the parent Act and that the delegated authority is not entitled to legislate retrospectively in the absence of any express provision in its parent Act will render the amended new s. 20 and other amended provisions in Act 388 futile, otiose, in vain and nugatory. This runs contrary to the maxim that Parliament does not legislate in vain.

[50] For this court to disregard the express provision of amended s. 20 of the Act 388 would have a far-reaching effect and consequences in that the court is encroaching into the realm of legislative domain.

[51] Based on the above reasons, questions 1, 2 and 6 are answered in the affirmative.

Questions 3, 4 And 5

[52] Questions 3, 4 and 5 collectively relate to the issue of whether the respondents' purported right for adjustment of pension based on the increase of salaries of serving Members of Parliament is an accrued or acquired right which is covered or saved by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). The Court of Appeal was, amongst others, of the view that the respondents possessed the right to receive a pension that was in proportion to the then-current salaries of serving Parliamentarians. This was

held to be a pre-existing and accrued right (even if the right to receive 167.46% increase had not yet accrued). It was also held that the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388).

[53] We are of the view that the Court of Appeal had erred in this respect. This is because, at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the respondents' entitlement to adjustment of pensions to account for increment in salaries of current members of Parliament under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is neither saved nor protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). The reason being, the respondents' claims were not rights which had already accrued when the 2015 Order was made on 16 February 2015.

[54] Such purported adjustment of pension based on the increase of salaries is not an accrued nor acquired right, but merely a contingent right that depends on the occurrence of specified event, *ie*, salary revision, or a merely inchoate right that has not fully developed, matured or vested, which is not covered nor saved by the provision of s. 30(1)(b) of the Act 388.

[55] The right, privilege, obligation or liability that is not affected by the repeal of an Act or provisions of law is one which is already acquired, accrued or incurred under the repealed Act or repealed provisions and that something has been done to exert such right, privilege, obligation or liability.

[56] When the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the right of the respondents to receive a pension that was adjusted in accordance with the increase in salaries had not yet accrued at the time. In fact, the principal Act was amended to increase the salaries of currently serving MPs, three months after the said 2015 Order.

[57] Savings do not apply to a mere right to take advantage of a repealed provision, and something must have been done or have occurred to cause a particular right to accrue under a repealed Enactment. In our present appeal, there is none.

[58] The Court of Appeal erred when it relied on *Syed Ibrahim*, in holding that:

(i) although s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) had been amended by the addition of several words after the case of *Wong Pot Heng*, it would not change their character as Interpretation Acts; and

(ii) that the decision of *Wong Pot Heng*'s case is still binding and the amendment to s. 20 of the Act 388 has not changed the situation. In order to give the exemption order its retrospective effect, the Act must make provisions for it.

[59] Such findings by the Court of Appeal in *Syed Ibrahim* is erroneous as it had completely disregarded the effect of the amendments made to the long title, s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and the insertion of new s. 17A *vide* Act A996. Section 20 of the Act 388, after its amendment, has dispensed with the need for an express power to be given by the parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its parent Act.

[60] Therefore, it follows that the decision in *Wong Pot Heng* which enunciated that a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its parent Act is no longer binding, in view of the subsequent amendments made to the long title, s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s. 17A *vide* Act A996.

[61] The Court of Appeal decision in *Syed Ibrahim*'s case on this point was made *per incuriam* as it completely disregarded the law prevailing at the time.

[62] We therefore answered question 3 in the negative, while we answered questions 4 and 5 in the affirmative.

Questions 7 And 8

[63] At the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the respondents' entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under para. 2 or a derivative pension granted under para. 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is not an accrued or acquired right which is saved or protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388).

[64] The respondents' entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right which is neither saved nor protected by s. 30(1)(b) of the Act 388.

[65] The unaccrued inchoate right to receive an increased pension which was not saved by s. 30(1)(b) of the Act 388 can be modified or extinguished by retrospective amendment.

[66] We answered Questions 7 and 8 in the affirmative. A

Other Issues

[67] On the alleged unconstitutionality aspect of the new sub-paras. 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) as we have articulated above, the provisions are not unconstitutional as they have not infringed the respondents' alleged constitutional rights under arts. 132, 147 and 160(2) of the FC. B

[68] The Court of Appeal, in its analysis, held that the respondents were not members of the public service and hence, the protection accorded under art. 147(1) of the FC did not apply. C

[69] Articles 132 and 147 of the FC do not apply to the respondents. We wish to reiterate that those articles are specifically to cater for the members of the public services and the protection of pension rights of members of the public services. D

[70] Pursuant to clear provision of art. 132(3) of the FC, the public service shall not be taken to comprise the office of Member of either House of Parliament. The protection of pension rights under art. 147 of the FC only applies to members of the public services listed under art. 132 of the FC and does not apply to the respondents who were not members of the public services. E

[71] The provisions of arts. 132(1), (3) and 147(1) of the FC are very clear without any ambiguity. Thus, the court must give effect to those provisions without attempting to modify and qualify them, particularly where there is no ambiguity. F

[72] All the respondents started serving as Members of Parliament after the date of repeal of the Act 394, *ie*, 20 November 1992. The Parliamentary Service Act 1963 (Act 394) had been repealed by para. 7(d) of the Constitution (Amendment) Act 1992 (Act A837), which came into operation on 20 November 1992. G

[73] Consequently, effective 20 November 1992, the category of public service mentioned in s. 2 of the Pensions Adjustment Act 1980 (Act 238) shall no longer include the parliamentary service referred to in the Parliamentary Service Act 1963 (Act 394). H

[74] The express provisions of art. 132(3) read together with art. 132(1) of the FC clearly exclude the office of Member of either House of Parliament from the list/category of public services. There is therefore no ambiguity as far as the provisions of arts. 132(1), (3) and 147(1) of the FC are concerned. It is the court's duty to give effect to those provisions without attempting to modify and qualify them, particularly where there is no ambiguity. I

[75] Therefore, there will be no issue that the amendment to para. 20 of the First Schedule of the Act 237 had resulted in a "less favourable situation" to the respondents as allegedly guaranteed by art. 147(1) of the FC.

[76] The respondents referred to the case of *Aminah Ahmad* in support of their case. However, *Aminah Ahmad*'s case is peculiar to its own facts, poles apart from our present appeal as we have explained above. The challenges therein were to the validity of certain amendments to the Pensions Adjustment Act 1980 (Act 238) on the ground that they are *ultra vires* art. 147 of the FC. Act 238 and art. 147 of the FC apply to the officers/member of the public services and not those who are not members of such public services. Both Act 238 and art. 147 of the FC are not applicable to the respondents, hence *Aminah Ahmad*'s case is distinguishable and cannot be applied this appeal.

[77] In the present appeal, premised on art. 132(3) of the FC, the respondents, being previous members of either House of Parliament, shall not be considered as members of the public services (unlike the situation in *Aminah Ahmad*'s case).

[78] A situation of "not less favourable" or "not less favourable test" as clearly embodied in art. 147(1) of the FC is specifically referred to the award of pension granted to a member of any of the public service and not to the respondents (former members of either House of Parliament) who were not considered as members of the public services listed under arts. 132(1) and (3) of the FC.

[79] Therefore, there will be no issue that the amendment to para. 20 of the First Schedule of the Act 237 had resulted in a "less favourable situation" to the respondents as allegedly guaranteed by art. 147(1) of the FC.

[80] The constitutionality of the FC is considered from the perspective of the Constitution itself, and it is not to be interpreted by reference to other statutes. The Pensions Adjustment Act 1980 (Act 238) or the Parliamentary Service Act 1963 (Act 394), each being a subsidiary legislation *qua* the FC, could not be interpreted in such a way as to fill any *lacuna* (if at all there is) the FC.

[81] Neither could Act 238 or Act 394 competent legal instruments to confer the status of members of the public services to the Members of Parliament (respondents) under arts. 132 and 147 of the FC.

Conclusion

[82] We answer the questions posed to us as follows:

Question 1

In view of the subsequent amendments made to the long title, s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s. 17A *vide* Act A996, whether s. 20 of the Interpretation Acts 1948 and

1967 (Act 388) after its amendment has dispensed with the need for an express power to be given by the parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its parent Act?

Affirmative.

Question 2

Whether the decision in *Kerajaan Malaysia v. Wong Pot Heng & Anor* [1997] 2 CLJ 188; [1997] 1 MLJ 437 which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its parent Act' is no longer binding in view of the subsequent amendments made to the long title, s. 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s. 17A *vide* Act A996?

Affirmative.

Question 3

Whether the previous Members of Parliament's entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a member are revised, the salary on which a pension granted under para. 2 or a derivative pension granted under paras. 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is an accrued or acquired right which is saved or protected by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388), at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015?

Negative.

Question 4

Whether such previous Members of Parliament's entitlement to pension under the former (old) para. 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s. 30(1)(b) of the Interpretation Acts 1948 And 1967 (Act 388)?

Affirmative.

Question 5

Whether the unaccrued inchoate right to receive an increased pension which was not saved by s. 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment?

Affirmative.

A Question 6

In view of amendment to long title of the Interpretation Acts 1948 and 1967 (Act 388) *vide* Act A996, whether the scope and character of the Act 388 is not merely limited to meanings of words used in written law/ interpreting words and phrases of the statutes?

B Affirmative.

[83] Given the aforesaid, we allowed the appeal with no order as to costs. We set aside the decision of the Court of Appeal and affirmed the decision of the High Court.

C **[84]** My learned sister and brother judges, Justice Zabariah Mohd Yusof, FCJ and Justice Abdul Karim Abdul Jalil, FCJ have had sight of the judgment in draft and concur with the reasons given and the conclusions reached.

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